

5 of reasons, and we can never lose sight of that.

6 Okay. Thank you very much, panel. We
7 appreciate your view. We might send you some
8 questions, which we would hope you might respond
9 to to help us in this process.

10 We will adjourn until 1:55. You can go
11 through security and go down to the cafeteria or
12 the snack bars and hopefully we'll all be back
13 here in time to start the Manufacturers Panel.

14 Thank you. We're in adjournment.

15 (Whereupon, at 1:05 p.m., the public
16 hearing was recessed, to reconvene at 1:55 p.m.)

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19

20 AFTERNOON SESSION

21 (2:00 p.m.)

22 CHAIRMAN HOGEN: Good afternoon and

1 welcome to the Manufacturers Panel. We are going
2 to proceed following the format we followed this
3 morning; that is, each of the presenters will
4 summarize their remarks, hopefully in five
5 minutes, and then we will entertain questions
6 both from the Commission and comments from the
7 public and conclude the panel.

8 Certainly we couldn't have the gaming we
9 have today if it were not for the folks who
10 design and build and market the equipment that's
11 necessary to make that work and certainly it is a
12 vast, very complex proposition to come up with
13 this equipment that can be secure, pay off, and
14 be regulated.

15 But this afternoon, we have from
16 International Game Technology Knute Knudson, Jr.
17 We have from Bally Technology Mark Lerner,
18 General Counsel. We have Gary Loebig from Multi-

19 Media Games. We have Ron Harris, President and
20 CEO of Rocket Gaming Systems, and from Planet
21 Bingo, we have Eric Casey.
22 So, we are ready to commence, and we'll

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1 start with Knute Knudson.
2 Panel 4 - Manufacturers
3 MR. KNUDSON: Thank you, Mr. Chairman,
4 Commissioner Choney. Thanks for the opportunity
5 to address this hearing today.
6 If I may incorporate the written
7 information IGT has and will submit by reference
8 today or at least note that my testimony is not
9 inclusive of all of IGT's objections to these
10 proposed regulations, so that I can then focus on

11 my testimony on our most grave concerns with the
12 proposed regulations.

13 Directly and through Sodak Gaming, IGT
14 has provided gaming devices that help tribes
15 realize IGRA's goals to promote tribal economic
16 development, self-sufficiency, and strong tribal
17 governments since IGRA's inception.

18 Our concern with the proposed
19 regulations are twofold. We are concerned that,
20 Number 1, the proposed regulations are designed
21 to cure a problem that does not exist and, Number
22 2, that these proposed regulations will result in

1 substantial economic harm to tribes and to tribal
2 programs that assist tribal members.

3 The Commission's concern that Class II

4 games be distinguished from Class III games has
5 driven much of the proposed regulation, yet the
6 objective evidence leads inescapably to the
7 conclusion that the distinction between Class II
8 game of bingo played with an electronic aid and a
9 Class III game is quite clear today.

10 Despite its egregious offense to
11 sovereignty, tribes today will pay as much as 25
12 percent of their slot revenue to states pursuant
13 to negotiated revenue-sharing agreements to offer
14 Class III slot machines to their customers rather
15 than offer Class II games with electronic aids.

16 This, despite the fact that Class II
17 games require no revenue-sharing payments. Why?
18 Because even with the most advanced Class II
19 equipment aids, the player, the customer, can
20 easily detect the difference between a Class II
21 game and a Class III game.

22 The proposed regulations will not serve

1 to distinguish one class of games from another as
2 that distinction already exists today. However,
3 the proposed regulations will serve to damage the
4 playability of the games and so damage tribal
5 revenues.

6 The proposed regulations seek to burden
7 the Class II games and aids to the play of Class
8 II games in ways that make the game no more Class
9 II than an unburdened game. The regulations do
10 make the game less appealing to the player and
11 more difficult and less profitable to offer by
12 the tribal operator.

13 These regulatory burdens to which we
14 object to most strongly are: (a) daubing
15 requirements, auto-daub and mandated time to
16 daub. We submit that neither auto-daub more a
17 two-second minimum wait, even when all players

18 have completed direct daubing during daubing, are
19 required for the play of bingo.
20 (b) ball release restrictions. New
21 ball release restrictions add significantly to
22 game time but do not increase a game's quality as

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1 bingo.
2 (c) pays, patterns and probabilities.
3 We object to exclusion of the traditional option
4 of a player to purchase a chance to win
5 additional bonus prizes based on patterns that
6 are not central to the game. This prohibition
7 does not increase a game's nature as the game of
8 bingo.
9 Game start restrictions. Requirements

10 for more than two players or additional time for
11 a game start make a game no more bingo but such a
12 game is less appealing to the player and is less
13 efficient for the tribal operator.

14 Damage to tribal revenue potential.

15 With the burdens I note above, we estimate it
16 will take as much as 13 seconds to play a single
17 Class II game of bingo with an electronic aid.
18 This will double or even triple game time
19 compared to games offered today. Such an
20 increase in game time is devastating in its
21 negative effect on tribal gaming operations. It
22 will reduce gaming revenue for Class II

1 operations by 40 to 70 percent. It will reduce
2 Class II tribal gaming revenue nationwide by as

3 much as \$1 to \$3.4 billion.

4 IGT is concerned that the proposed
5 certification system would fatally burden the
6 future of Class II gaming. If certification is
7 required, as proposed, manufacturers have few
8 protections: either substantive or procedural.
9 Proprietary information is at risk. Delays are
10 certain to impede certification. Manufacturers
11 standing to appeal negative determination is in
12 doubt, but even more, the Commission proposal
13 provides minimal opportunity for any challenge to
14 an independent laboratory, except for NIGC's
15 chair own ability to object to the findings and
16 with few limitations on the time or content.

17 A clear distinction exists today between
18 Class II electronic aids and Class III gaming
19 devices. Implementing the regulations you
20 propose to make the game less appealing to the
21 player and less valuable to the tribe will only
22 serve to hurt the interests of tribes.

1 I urge you and the Commission in the
2 strongest possible terms to withdraw and
3 reconsider the effect of these proposed
4 regulations.

5 CHAIRMAN HOGEN: Okay. Thank you, Mr.
6 Knudson. Mr. Lerner?

7 MR. LERNER: Thank you, Mr. Chairman,
8 Commissioner. Thank you for the opportunity to
9 be here today and the invitation. It's very much
10 appreciated.

11 I'm Mark Lerner. I'm Senior Vice
12 President and General Counsel for Bally
13 Technologies. Bally has been a leader in the
14 gaming industry for 75 years now. We have
15 developed many of the innovations that are now
16 common in the industry, and as most people know,

17 in 2004, we acquired Sierra Design Group which
18 was a leader, a developer of Class II and Central
19 Determination Video Lottery Games and a pioneer
20 in that field.

21 Since that time, we've continued to
22 develop and provide to our tribal gaming

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1 customers Class II games that are both legal and
2 commercially successful. We've invested millions
3 of dollars in our Class II products, so we
4 currently support thousands of Class II
5 electronic devices spread across dozens of tribal
6 gaming facilities.

7 In developing our Class II games, we
8 have two paramount concerns. One, that they be

9 legal, and two, that they be commercially
10 successful. A game that is legal but a
11 commercial failure is not any good to us or to
12 our customers. Similarly, as a game vendor
13 licensed in scores of jurisdictions around the
14 country and the world, we simply cannot provide
15 games that fail to meet the legal requirements of
16 the applicable regulations.

17 In our view, Congress clearly intended
18 that tribes make money with Class II gaming. In
19 fact, the first stated purpose of the Act is to
20 provide a statutory basis for the operation of
21 gaming by Indian tribes as a means of promoting
22 tribal economic development, self-sufficiency,

1 and strong tribal governments.

2 It's also our view that Congress
3 provided a bright line test to distinguish
4 electronically-aided Class II games from Class
5 III games. As explained in the legislative
6 history, a Class II game can be played with
7 electronic aids as long as the aids do not make
8 the game into a facsimile by permitting a single
9 player to play a game against a machine rather
10 than against other players, and I know that the
11 previous panels have belabored this point at
12 length and so I won't go much further than that.

13 I know that you and I, Mr. Chairman,
14 were on a panel not too long ago where we agreed
15 to disagree on this particular point, and I would
16 just say that maybe it's the perspectives, the
17 point of view that we come at it from.

18 I come at it from beginning in the
19 casino industry and looking at it from games that
20 are clearly casino games and I see a Class II
21 game and I'll tell you, I can tell the difference
22 instantly. It doesn't take a lot of time or

1 factfinding.

2 A game that meets the statutory
3 requirements for bingo may be played using
4 electronic aids but only if it doesn't permit a
5 player to play against the machine and this is
6 the bright line as to what is permitted, and at
7 the same time, it gives us the flexibility that
8 we need to build and develop exciting games that
9 are commercially successful.

10 We believe that the classification
11 regulations proposed by the Commission would
12 muddy this clear line by imposing numerous
13 onerous restrictions on both the underlying games
14 and the types of electronic aids used to play
15 those games. The games that would be permitted

16 would be slow, hard to play, and generally
17 unappealing, and they would be limited to a very
18 narrow range of games that would have very little
19 commercial viability.

20 We believe that the games that would be
21 permitted under the proposed regulations would
22 generate something less than half of what the

1 current games do.

2 There are other proposed problems with
3 the proposed standards. They are so stringent
4 that it may not be possible from a commercial
5 standpoint to build a game that is compliant.

6 While we strongly support the idea of Class II
7 technical standards, the standards need to be

8 reasonably based on current technology and the
9 economics of the games, and we will submit
10 comments in more particular on that as we go
11 along here.

12 I'd also like to point out that on a
13 previous panel, someone was asking how many games
14 are out there that do comply with the regs as
15 proposed, and there was some speculation there
16 might be some, there might be a few, there might
17 be many, there might be none. I don't know of
18 any, and I don't think that we know of any that
19 comply with this, and we would have to re-
20 engineer these games.

21 This is a new type of bingo. This isn't
22 any kind of bingo that's out there now and so I

1 don't know how this fits in with the definition
2 of a game commonly known as bingo, but it's hard
3 to make a case that these regulations cover that
4 field.

5 It's hard to make a business case for us
6 to stay in the market because we have to develop
7 -- it's very costly to develop games, especially
8 if they generate less revenue than the current
9 ones. We have significant concerns about linking
10 our name to a game that is unlikely to be
11 accepted. We like to build successful products,
12 not unsuccessful ones.

13 We have also concerns that our ability
14 to provide games under a regulatory framework
15 where the Commission has reserved the right to
16 revoke the game certifications on an unlimited
17 basis for an unlimited length of time. This
18 would be an enormous risk for both us and the
19 tribes to assume, another point that's been
20 raised by previous panelists.

21 Thus, we're left with the unfortunate

22 conclusion that the current proposed regulations

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1 are likely to destroy the commercial viability of
2 Class II gaming which will hurt everybody, the
3 tribes, us, and force us to reconsider whether to
4 stay in the market or not, and I would echo Mr.
5 Knudson's request and urge the Commission to
6 withdraw the current proposed classification
7 regulations and take a fresh look at the issue
8 after completing work on the technical standards
9 regulations.

10 CHAIRMAN HOGEN: Thank you. Mr. Loebig?

11 MR. LOEBIG: Chairman Hogen,
12 Commissioner Choney, guests and staff.

13 I am Executive Vice President of Multi-
14 Media Games, and today I'm substituting for the

15 CEO of Multi-Media Games Clifton Lind who had a
16 death in his family on Sunday.
17 I would like to thank you for inviting
18 us to comment today on the proposed Class II
19 definitions and classification standards. These
20 definitions will have a far-reaching impact on
21 how Class II games can be designed and played and
22 on the economic development that they foster for

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1 the tribes.

2 My 23 years of experience in the bingo
3 industry and product and market development began
4 more than four years before the IGRA was passed.
5 Subsequently, I've continued to work in the
6 industry, first for Bingo King, and for the last

7 seven years with Multi-Media Games.

8 During that time, I have been involved
9 in assisting state and tribal governments with
10 legislation, rule-writing and regulatory training
11 in the Indian Country and charity markets.

12 Many of the products I have worked on
13 you may be familiar with. They include precall
14 Bonanza Bingo, Bonus Line Bingo, and System 12,
15 an electronically-assisted bingo system. These
16 products represent the adaptation of the
17 advancement in technology to the prevailing rules
18 in order to allow users of the technology,
19 charities and tribes, to take advantage of the
20 technology for their economic benefit, much the
21 same as the IGRA was designed.

22 The risk in writing rules which address

1 technology lies in the fact that the benefit of
2 the innovations can be restricted and possibly
3 eliminated. I do not know of any Class II
4 electronic bingo product which currently conforms
5 to the proposed classification criteria. This is
6 a very expensive and time-consuming process,
7 probably more time-consuming than the Commission
8 appreciates.

9 Additionally, a decline in the number of
10 tribes conducting Class II gaming is probable.
11 This decline is predicated on the supposition
12 that new Class II games which meet the proposed
13 classification criteria generate appreciably less
14 revenue than those Class II games currently
15 approved by the NIGC. This results in the tribes
16 who have Class II gaming alternatives selecting
17 those alternatives.

18 With the introduction of compacted games
19 in Oklahoma and with slot machines being
20 introduced into Florida racetracks, thereby

21 putting pressure on the state and the Florida
22 tribes to eventually compact, there are only four

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1 states with IGRA tribes where the tribes have no
2 alternative, where they are forced to conduct
3 only Class II games, that being Alabama, Alaska,
4 Nebraska, and Texas.

5 The combined number of Class II units
6 operated by these Class II captive tribes is
7 estimated to be between 3 and 4,000 units. A
8 market of this size will support a limited number
9 of vendors. The tribes may experience less
10 variety and less competitive prices. The
11 viability of the Class II games is undoubtedly
12 the most important factor as to whether tribes
13 move to Class III and vendors leave the market

14 segment.

15 Multi-Media Games has been developing
16 Class II games since the year IGRA passed. It
17 has provided the game at each stage of the
18 advance in technology. Along with its tribal
19 partners, it has seen the economic impacts of
20 revenue growth at each stage in the form of net
21 revenue receipt per day.

22 In 1989, Mega Bingo, Multi-Media's

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1 satellite-delivered paper bingo game, increased
2 the net revenue of a paper bingo sheet earning
3 \$16 per night by an additional 11.68 percent. In
4 1998, Mega Mania increased the daily net revenue
5 of that equivalent paper bingo sheet by 3.75

6 times. With the introduction of real-time bingo,
7 that sheet's daily net revenue increased roughly
8 by 7.5 times.

9 The approved 2.0 version of real-time
10 bingo introduced in 2003 reduced the daily net
11 revenue increase to about 4.7 times of that bingo
12 sheet and finally, a second modified version of
13 the real-time bingo, 2.0, approved in 2005, that
14 more closely approximates the proposed rules,
15 reduced the daily net revenue increase of that
16 equivalent bingo sheet to 1.3 times.

17 Stating it another way, if the paper
18 bingo sheet's net revenue amounted to \$10, then
19 Mega Bingo would have increased the sheet's net
20 revenue to 11.68. Mega Mania would have
21 increased the net revenue to \$37.50. Real-time
22 bingo 1.2 would have increased it to \$75. Real-

1 time bingo 2.0 would have reduced it to \$47 and
2 the latest approved real-time bingo version would
3 have reduced the net revenue of an equivalent
4 bingo sheet to \$13.

5 To further illustrate the impact in this
6 example, if you use the 20,000+ Class II machines
7 estimated to be in Oklahoma in calendar year
8 2003, by the Indian Gaming Industry Report 2004-
9 2005 Edition, and use that as a base number of
10 the affected units, then the difference between
11 the Class II game approved in 2003 and the
12 modified Class II game approved in 2005 amounts
13 to 248 million in net revenue and to 4.9 billion
14 in gross revenue, just on those 20,000 units.

15 In short, if, among other things, a game
16 does not appeal to a player because flexibility
17 in the price structure is limited, the game
18 mechanics are difficult for the player to
19 understand, and the game plan flow is not

20 intuitive, then the players will not play except

21 as a last resort of sorts.

22 It is not a truism that if it is the

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1 only game in town, people will play. Similarly,

2 it is not a truism that a tribe can achieve its

3 economic development goals through the

4 implementation of just any form of Class II

5 gaming.

6 Thank you.

7 CHAIRMAN HOGEN: Thank you. Mr. Harris?

8 MR. HARRIS: If that wasn't depressing

9 enough, I'll take my turn.

10 Good afternoon. My name is Ron Harris.

11 I am the Chief Executive Officer of Rocket Gaming

12 Systems, which is a commercial enterprise in the

13 Miami Tribe of Oklahoma Business. We provide
14 thousands of Class II games to more than 80
15 tribal gaming facilities located in 12 states.
16 After working on the Mega Mania project
17 with Multi-Media Games, I moved on as one of the
18 original founders of Rocket Bingo in September of
19 1996. As a side note, I will tell you we did
20 celebrate our 10th birthday yesterday, and I will
21 also tell you I think those were all in dog
22 years. This is a tough business.

1 We developed a game in 1996 called
2 Rocket Ante-Up Bingo. Rocket Ante-Up, like Mega
3 Mania, was based on a game called Lightning
4 Bingo. We had tried to market Rocket Ante-Up to

5 Indian gaming facilities, but we were repeatedly
6 told by gaming commissioners that we had to get a
7 Class II letter, like Mega Mania's, before we
8 could be played in their gaming facilities.

9 We therefore had to request a
10 classification letter from the NIGC. By this
11 time, the Department of Justice had already
12 expressed its disagreement with Mega Mania's
13 Class II classification. We were instructed by
14 the NIGC to meet with the DOJ, U.S. Attorney
15 Stephen Lewis in the Northern District of
16 Oklahoma to seek an advisory opinion that Rocket
17 Ante-Up was Class II and that if we were
18 successful, the NIGC would issue a similar Class
19 II opinion within 48 hours.

20 Our first meeting with U.S. Attorney
21 Lewis began and ended with the statement that it
22 was the position of the DOJ that if it plugs into

1 the wall, it's a slot machine. After many
2 meetings with the DOJ and much behind the scenes
3 help from the NIGC, we were issued a historic
4 written opinion from the Department of Justice in
5 July of 1997 that a game called Rocket Classics
6 Bingo was in fact a Class II game. It was the
7 first letter and I have been told by others it
8 will be the last letter ever written by the DOJ.

9 The NIGC shortly issued classification
10 opinions on Rocket Classics as well as Rocket
11 Ante-Up that they were Class II games as well.

12 Several years later, I was told by Mr.
13 Lewis, who was the U.S. Attorney for the Northern
14 District, that DOJ issued the Rocket Classics
15 letter for three reasons. The first reason: the
16 DOJ didn't think we could build it. Secondly:
17 if we built it, it wouldn't be any fun. Thirdly:
18 if it were fun, the DOJ didn't think we could

19 make any money with it.

20 Thankfully, the DOJ was wrong on all

21 three accounts, and I might add, thankfully, the

22 DOJ has not sued us for any royalty payments for

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1 helping and assisting such a successful game

2 design.

3 I'm stating my recollection of these

4 events not to find fault with anyone or any

5 particular agency. I state them in an attempt to

6 add a bit of historical perspective to the events

7 that have spanned more than a decade and have

8 contributed to reasons why we are sitting in this

9 historic meeting.

10 During my work over the last 11+ years,

11 I have talked to many tribal leaders who tell of

12 an even more historic journey that seems to be
13 forgotten, the battles fought, and the
14 negotiations that led to the 1988 Indian Gaming
15 Regulatory Act to begin with. Those efforts led
16 to what most tribes believe is a very clear
17 definition of bingo.

18 If Congress had attempted in 1988 to
19 further define bingo beyond the three statutory
20 requirements, such as imposing limitations on the
21 value of the game-winning prize, the size of the
22 ball draw, the size of the bingo card, the number

1 of release of bingo ball numbers, the size of
2 each bingo number release, the time period of the
3 release, and the number and length of each daub,

4 I would dare speculate that IGRA would not have
5 made it to the Floor for a vote. Yet, these
6 limitations are all found in the proposed
7 classification regulations.

8 The three statutory requirements of the
9 Act offer a very bright line to differentiate
10 between the game of bingo from a slot machine. I
11 think the other three manufacturers here have
12 done a much better job than I of describing that.
13 There are radical differences in design and
14 operation of a bingo game versus a pure simple
15 slot machine.

16 I'm here to testify that the Act's three
17 statutory requirements result in a bingo game
18 that is dramatically different in design and
19 operation than that of a slot machine and
20 provides a very bright line for those
21 manufacturers that abide by those three statutes.

22 It's my opinion as a manufacturer that

1 the proposed classification standards as
2 published will not allow the development of a
3 commercially-viable product. The regulation as
4 published will effectively fulfill the original
5 intent of the DOJ.

6 Number 1. I don't think we can build
7 it.

8 Number 2. If we build it, I'm not sure
9 it will be fun.

10 Number 3. If it happens to be fun, I
11 don't think any of us are going to make any money
12 with it.

13 I can assure the Commission that bingo
14 games that would be developed in accordance with
15 the proposed standards will be so extraordinarily
16 expensive to produce and maintain and would be so
17 unique that they wouldn't be found in any paper

18 hall anywhere in the world.

19 Unless the regulations are revised, the
20 result would be devastating to tribes that rely
21 on Class II gaming to generate revenue for tribal
22 government programs, tribes that need Class II as

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1 a viable fallback position to existing state
2 compacts and to small vendors, such as Rocket.
3 Moreover, they are likely to lead to years of
4 litigation.

5 We recommend that the Commission
6 withdraw the current proposed classification
7 regulations. Instead, we hope the Commission
8 will continue to work with the tribes and vendors
9 to develop reasonable technical standards which
10 could aid both tribes and vendors.

11 I sincerely thank Chairman Hogen and the
12 rest of the NIGC staff for holding this historic
13 meeting. I truly believe the Chairman and the
14 NIGC staff are interested in acting in the best
15 interests of all Indian tribes and I commend them
16 in this regard.

17 Without such thoughtful deliberation and
18 consideration, however, I fear that, along with
19 further tribal sovereignty erosion, thousands of
20 jobs and hundreds of millions of dollars in
21 investment capital will be lost.

22 Thank you.

1 CHAIRMAN HOGEN: Thank you. Mr. Casey?

2 MR. CASEY: Thank you, Mr. Chairman,

3 Vice Chairman Choney, and ladies and gentlemen of
4 the audience.

5 My name is Eric Casey, and I represent
6 Planet Bingo. I also represent 16 years of
7 manufacturing service to the Session Bingo
8 Operators in Indian Country and beyond.

9 I've had the good fortune to be on hand
10 as well as some of the earliest electronic bingo
11 devices made their way into what at the time was
12 a purely paper bingo marketplace, and as the
13 proposed classification standards focus on bingo
14 played in an exclusively electronic medium, I'd
15 like to begin my discussion by pointing out that
16 across nearly 100 years of American bingo
17 history, the game of bingo has transmigrated
18 through numerous mediums, beginning with beans on
19 hard cards and progressing into shutter cards,
20 then into newsprint bingo cards and daubers and
21 now into electronic cards.

22 At each progressive level of technology,

1 we have seen enhancement to the game of bingo by
2 speeding up the game play, by allowing players to
3 play more cards faster, and by adding the
4 possibility of new entertainment values with the
5 introduction of game attributes, like wild
6 numbers and bonus prizes, but all the while,
7 throughout that history, we have maintained the
8 core attributes that have set the game of bingo
9 apart from other games of chance: multiple
10 players and a common game and a winner every
11 time.

12 In 1988, the IGRA distilled these core
13 attributes into the three statutory criteria that
14 identify Class II bingo and these criteria hold
15 up no matter what medium the game is played in.
16 They are as appropriate to hard cards as they are

17 to electronic bingo devices.

18 Furthermore, the IGRA accommodates the
19 continuing evolution of industry toward
20 information age products, stating "the game of
21 chance, commonly known as bingo, whether or not
22 electronic, computer or other technologic aids

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1 are used in connection therewith, clearly
2 separates the game of bingo from the medium
3 through which it is played," and this is just as
4 important a distinction as that which is drawn
5 between an aid and a facsimile.

6 The IGRA defined the criteria by which
7 bingo is bingo and it placed no restrictions on
8 the mediums through which the game was played as
9 long as the game itself wasn't replaced with an

10 electronic or electromechanical facsimile of a

11 game of chance.

12 This distinction between an electronic

13 aid and an electronic facsimile is well iterated

14 in the 2002 revision to 25 CFR Part 502.8 as it

15 currently stands, while the proposed change in

16 this definition throws the entire electronic

17 bingo medium into the realm of facsimile and

18 forces it to fight its way out.

19 The proposed language calls a facsimile

20 any electronic or electromechanical format that

21 replicates a game of chance by incorporating all

22 of the fundamental characteristics of the game,

1 but the fundamental characteristics of the game

2 are the very same criteria spelled out in the
3 IGRA to define Class II bingo. So, this proposed
4 revision to 502.8 presents a very unsatisfying
5 conundrum, to say the least.

6 This leads to another troublesome area
7 in the proposed classification standards. The
8 draft states that it is not, "not" the
9 Commission's intent to prescribe rules for how a
10 tribal gaming operation conducts its live session
11 bingo. The exception to this general approach is
12 when a tribal gaming operation conducts its live
13 session bingo exclusively through network player
14 stations or when these devices essentially
15 perform all the functions of bingo play normally
16 undertaken by the players.

17 The Commission here is attempting to set
18 up two different types of bingo: live session
19 bingo and bingo played exclusively through an
20 electronic medium, and the Commission proposes to
21 prescribe rules governing the latter at the
22 expense of the entire electronic medium itself.

1 I don't think it's viable to separate
2 live session bingo from bingo played on Class II
3 machines to begin with because if it's Class II
4 bingo under the IGRA, it's Class II bingo. It's
5 all live session bingo. It's either bingo under
6 IGRA or it's not.

7 So, why should the electronic medium be
8 separated and limited and restricted,
9 parameterized if the bingo game that's being
10 played in conjunction or in connection with the
11 medium of electronic aids meets all of the
12 statutory criteria of a Class II game under the
13 IGRA?

14 Shouldn't the focus be on ensuring that
15 the IGRA Class II criteria are being upheld and

16 the game's being played with the technologic aids
17 and not on how fast the balls are called or how
18 big the cards are or what the display looks like
19 on these aids?

20 I'm compelled to note that while it's
21 the Commission's stated intent not to prescribe
22 rules for how a tribal gaming operation conducts

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1 its live session bingo, that's exactly what the
2 Commission is doing in trying to classify bingo
3 played in an exclusively electronic bingo medium
4 as somehow separate from live session bingo.
5 They are one and the same.

6 As a final note to this presentation and
7 speaking on behalf of live session bingo
8 everywhere, I would like to comment on the stand

9 the Commission is taking against the use of

10 predrawn numbers specifically.

11 Predrawn numbers are very common in a

12 popular game called Bonanza Bingo. The

13 Commission states that it believes predrawn

14 numbers are "an anathema" to games similar to

15 bingo. I had to look up anathema in Miriam

16 Webster's Dictionary and it reads, "Anathema.

17 From the Greek. A thing devoted to evil, a

18 curse, someone or something intensely disliked or

19 loathed."

20 That's pretty hard, but my point is

21 this. The use of predrawn numbers in games of

22 bingo has been around in the bingo marketplace

1 since long before the Commission was conceived or
2 the IGRA was enacted and this position against
3 predrawn numbers seems somewhat subjective and
4 perhaps worthy of significant reconsideration.

5 To wrap up with regards to the proposed
6 classification standards and Rule 25 CFR Parts
7 502 and 546, I believe these standards, if
8 passed, will leave the tribes and the industry
9 with a legacy of severely and unnecessarily
10 restricted innovation which will have a lasting
11 negative impact on the evolution and
12 sustainability of Class II gaming itself.

13 I think that better solutions to the
14 Class II/Class III product distinction challenge
15 are available to us and I would urge the
16 Commission and the industry to at the very least
17 stop and take a deep breath and start again
18 building on all of the dialogue and interaction
19 of the past three years.

20 Thank you, gentlemen.

21 CHAIRMAN HOGEN: Thank you very much.

22 Are there comments from the public or questions

1 for our panel or the Commission in this area?

2 MR. PARKER: Gentlemen, my tribe has a
3 couple of points to this, the first one being
4 who's going to pay for this?

5 This esteemed panel that sits up on the
6 table right there, they're business men. Our
7 tribe tried to do the responsible thing and
8 that's purchase their Class II machines. That
9 means we accept the burden or have to accept the
10 burden of the changes that you guys are putting
11 out monetarily.

12 Now we followed all of your
13 classification standards. We did everything that
14 we were supposed to do as a tribe and yet you

15 changed the rules on us. Now who's going to pay
16 for it?
17 These folks up here, a lot of them have
18 red share programs. Are they supposed to pick up
19 the cost of all of these changes? Not one of
20 them mentioned it, and I have to commend you for
21 that, but that's the elephant that's in the room
22 as far as I'm concerned.

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1 Please, sir, consider the following.
2 Remove the prohibition of auto-daub and the 10-
3 second delay. I agree with the good folks up on
4 the board. These things don't sit right at eight
5 seconds. Depending on the rest of your
6 requirements, these things can go as long as
7 eight seconds, 10 seconds, 12 seconds. It can

8 just keep going on.

9 These standards appear to be designed to
10 limit participation rather than increase it. The
11 two-second delays will force synchronicity
12 between players and remove the spontaneity of the
13 games.

14 I mentioned to you folks before when we
15 did our government-to-government consultations,
16 there was a band out in the '80s, it was called
17 Devo, and everybody moved at the same time.
18 Well, that's exactly what it's going to look like
19 out there with our players that do choose to play
20 these games.

21 Remove the display restrictions, two
22 strings and multichord display requirements.

1 This is the cost the tribes must absorb that is
2 just not necessary. We have no problem
3 displaying this as a bingo game. We actively
4 promote it in our facility. Our Class II games
5 outperform our Class III games.

6 Heck! I don't want to say -- most of
7 these folks don't want to put two-inch letters on
8 the machines. I'd put six-foot letters on my
9 machine saying this is certainly bingo, big neon
10 signs pointing at them, because in the State of
11 Washington, the requirements that are there by
12 the state for our Class III games, we don't have
13 cash in. We don't have white area progressives.
14 We don't have a lot of things that Class II
15 provides for us. That makes those games more
16 appealing to our customer base.

17 Please remove all provisions under which
18 the NIGC attempts to assert jurisdiction over
19 private third party gaming laboratories. We feel
20 that this will lead to excessive pressure over
21 vendors and ultimately to less innovative game

22 designs. These folks have told you up here just

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1 now, look, if it's not profitable, they can't be
2 involved in it. They're not in the business to
3 lose money nor are we. We have to take care of
4 our tribal programs.

5 Thank you, gentlemen.

6 CHAIRMAN HOGEN: Thank you. Any
7 additional comments or questions?

8 (No response.)

9 CHAIRMAN HOGEN: Well, let me ask a
10 question of the panel.

11 Right now, there is an air of
12 uncertainty, maybe only in the minds of the
13 National Indian Gaming Commission, but certainly

14 here, about what is or what isn't Class II. It
15 would seem to me if I were building and marketing
16 these machines, I would take comfort in a system
17 where there was some certainty or some clarity
18 with respect to where that line is in the minds
19 of the guys that we're regulating.
20 Is that a misperception on my part? Is
21 that not true? Do you understand what I'm
22 asking?

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1 MR. HARRIS: I can't speak for these
2 guys, but I do know that the Bank of America put
3 in our line of credit that in big bold letters,
4 depending on regulatory statutes, whether or not
5 I can draw on that line of credit.
6 I mean, the entire industry's looking at

7 this, and for a small operator like Rocket that
8 our primary product is Class II, I mean this is
9 being watched around the country, and it's pretty
10 serious for us.

11 The minute that the regulations, if
12 they're issued, that's whenever we have the
13 certainty in which to even tell our software
14 developers now look at this and tell me what we
15 can do. We've seen the draft and our development
16 staff looked at it and said, geez, we don't know.
17 We don't think we can generate a game.

18 Gary did a great job on talking about
19 some of the numbers, but here's another number
20 twist for you. We have, let's say, 30 titles on
21 our network, 30 titles, four levels of
22 denominations, penny, nickel, quarter, dime,

1 whatever it happens to be. That's a 120 titles.

2 So, you say, okay, a 120 titles and then

3 whatever that number ends up being that we

4 consider to be a bingo game, let's say it's six

5 people, well, six times a 120, which I could

6 figure that out if I wasn't standing up here with

7 those bright lights on, --

8 MR. LOEBIG: 720.

9 MR. HARRIS: Thank you. Big number.

10 What are you going to do at 3 o'clock in the

11 morning when you're in Misqualli, Washington, and

12 you're looking for players? So, you have to have

13 a wider network game. That's technology. That's

14 expense.

15 Mr. Parker will tell you I've had some

16 phone calls with him at 3:30 at night when

17 there's a backhoe operator in Wyoming that cut a

18 line and Washington just dropped off the radar

19 screen. That stuff happens. That is bingo.

20 It's not a slot game where you can stand there

21 and play that box all day long. It's a live

22 interactive real-time game.

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1 We can't even begin development till we
2 see what the things are, and I would assure you
3 to meet what we see to be the specs, it'll be
4 eight months to a year before we can comfortably
5 say we have a game that we can go give to Nick
6 Farley to run through his lab. Then we've got to
7 run it through 80+ tribal gaming commissioners,
8 run it through their lab.

9 Then, because it'll be a massive
10 software upgrade, we've got to send vans and
11 technicians to 80+ casinos to upgrade not just
12 the file servers, provided we have enough file

13 servers with the horsepower to conduct that kind
14 of game, then you have to upgrade every single
15 player station. Does it have enough memory? Is
16 the video card going to work? I mean, it's a
17 massive undertaking.

18 I think somebody in earlier testimony
19 had said 18 months, 16 to 18 months, maybe, and
20 lots and lots of money.

21 CHAIRMAN HOGEN: Yes, Gary?

22 MR. LOEBIG: Two points. One is

1 regulatory certainty is absolutely important to
2 manufacturers and absolutely important to the
3 industry. With regulatory certainty, tribes can
4 get loans for Class II facilities, manufacturers
5 can get loans. You know where you're going, you

6 can reduce your costs, you can avoid litigation.

7 So, I don't think that's necessarily an issue.

8 The issue is what does the regulatory

9 certainty provide, and my history in the paper

10 bingo business and Eric's history and other

11 people in this room, the paper bingo industry has

12 suffered from a lack of technology and it's

13 almost reduced to two manufacturers and that's

14 what I think the real concern is if you're a

15 manufacturer. It's not that you're certain that

16 you can produce something, but is it viable what

17 you're going to produce?

18 CHAIRMAN HOGEN: Well, it would be

19 useful to the Commission, I think, to have our

20 attention directed to those features that are the

21 most challenging; that is, if we're saying it

22 wrong and if there's a way to at least come close

1 to where we want to go or the way we'd propose to
2 go, but would be less problematic, less costly to
3 manufacturers and tribes, we'd surely like to
4 know that before we finalize any regulations
5 rather than after.

6 So, this has been an excellent
7 discussion. You've pointed out a lot of things
8 that bear very serious scrutiny on our part, but
9 it would be useful if you could -- you know,
10 don't assume we're smarter than we are. Point
11 those things out specifically and we'll guard it.
12 We're not going to share your proprietary
13 information to the extent that, you know, we're
14 cautioned about that, and I don't know that you
15 will be providing that exactly, but, you know, we
16 don't want to needlessly, you know, create chaos
17 if there's a better way to do it.

18 Question, sir?

19 MR. SOMDAY: Thank you. First of all,

20 I'm not the principal speaker for our tribe.
21 Someone else is going to give testimony, but I'm
22 glad you asked for questions.

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1 First of all, if it ain't broke, don't
2 fix it. Indian tribes are capable regulators and
3 are doing a good job, as the Creek decision would
4 confirm.

5 Second one is if you were to ask some of
6 the elder players of these Class II machines,
7 bingo machines, pull tabs or whatever, do you
8 want slower games or do you want faster games,
9 they would tell you we want faster games. What
10 you're proposing now would slow it down
11 considerably and make it totally unattractive.

12 If I recall, the National Indian Gaming
13 Commission, your organization, approved machines
14 that would now be considered illegal under your
15 proposed legislation.

16 Thank you.

17 CHAIRMAN HOGEN: Thank you. We would
18 like the opportunity to submit some written
19 questions to the panelists and if you could
20 provide responses to those, that would be much
21 appreciated. Thank you very much.

22 Our next panel will address more

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1 specifically Economic Impact and we have several
2 tribal leaders who will be addressing that.

3 So, let's take a few minutes to bring
4 the other panelists up and let's reconvene here